**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**and**
**THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

**WRIT PETITION NO : 16919 of 2004**

Between:

Boya Govindu, S/o.Boya Thapala Ranganna,
R/o.Puttapasam Village Gonegandla Mandal,
Kurnool District.

**..... PETITIONER**

AND

1 The Collector and District Magistrate, Kurnool.
2 Govt., of A.P., rep. by its Chief Secretary
General Administration (Law and Order-II)

Dept., Secretariat buildings, Hyderabad.
3 The Superintendent, Central Prison, Charlapally,

Ranga Reddy District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus Under Article 226 of the Constitution of India directing the Respondents to produce Boya Thapala Ranganna @ Boya Pedda Ranganna, S/o.Karrenna, now detained in Central Prison, Charlapally, before this Hon'ble High Court and he may be ordered to be released forthwith after declaring that his detention is illegal and void.

**Counsel for the Petitioner:MR.B.D.MAHESWARA REDDY**

**Counsel for the Respondents : THE ADVOCATE GENERAL**

**The Court made the following :**

**O R D E R:-** (per Hon'ble Sri Justice B.Seshasayana Reddy)

The petitioner seeks a writ of Habeas Corpus for production and release of his father Boya Thapala Ranganna @ Boya Pedda Ranganna, S/o.Karrenna, by questioning his detention under the Order dated 20-08-2004 of the first respondent under section 3(1) and (2) read with section 2(a) and (b) of the A.P.Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'Act'), as illegal and void.

2. Under the Order of the first respondent, made on 20-08-2004, Boya Thapala Ranganna @ Boya Pedda Ranganna, S/o.Karrenna, was taken into judicial custody on the same day. Subsequently, the Advisory Board considered his detention and sent its recommendations to the Government and thereafter the Government confirmed the Order of detention in G.O.Rt.No.4923, General Administration (Law and Order.II) Department, dated 26-08-2004 and directed for continuance of the detenu for a period of one year from the date of detention.

3. The detenu was served with the grounds of detention on which he was detained. All the acts alleged against him related to possession and transportation of illicit liquor.

4. The grounds of detention are:

> *"1. Cr.No.172 of 2000-01, dated 08-02-2001:*
>
> *On 08-02-2001 at about 11.15 a.m. during the course of raids on information received by (1) Sri K.Prasad Reddy, Prohibition and Excise Inspector, Enforcement Wing, Kurnool, (2) Sri P.Gnana Prakasham, Prohibition and Excise Sub-Inspector, Gonegondla, (3) Sri P.V.Subba Raju, Head Constable (4) Sri Atul Ahmed, PC-1857 along with mediators*

*(1) Sri K.E.Mareppa Goud, S/o.Venkateswarlu Goud, Vengod Village, (2) Sri V.Yerranna, S/o.Chinna Somanna, Puttapasam village, conducted house search at House No.2-142 of Puttapasam village, Gonegondla Mandal, Kurnool District, you were found in possession of 260 Karnataka Arrack Sachets. Sample was drawn, property was seized and you were arrested under the cover of a panchanama and a case in Cr.No.172 of 2000-01 under Section 7(a) read with 8(e) of A.P.Prohibition Act was registered in Pathikonda, Prohibition and Excise Station. The sample was sent to the Chemical Examiner, Kurnool through Court, who after analysis report in C.E.No.284 of 2001, dated 08-05-2001 opined that the sample is diluted arrack, unfit for human consumption. After completing the investigation, charge sheet was filed in the court of Judicial First Class Magistrate, Pathikonda and obtained C.C.No.246 of 2003 and the case is under trial. Thus you acted in a manner prejudicial to the maintenance of public order and tranquility and causing wide spread danger to public safety and public health.*

*2. Cr.No.48 of 2001-02, dated 21-06-2001.*

*On 21-06-2001 at 10.00 a.m. during the house search at Home No.2-142 of Puttapasam village, Gonegondla Mandal, Kurnool District conducted by (1) Sri G.Rammurthy, P&EI, Enft. Wing Kurnool, (2) Sri S.Krishna, S.I. (3) Smt.Khirunnisa Begum, P&ESI (4) Sri T.Eswaranna, P&EHC along with mediators (1) Sri Y.Harichandra Reddy, VAO and (2) Sri Talari Nagappa found 26 Karnataka Arrack Sachets. Samples was drawn, property was seized under the cover of a panchanama. The same is registered as Cr.No.48/2001-02 U/s.7(A) R/W 8(e) of A.P.Prohibition Act in Prohibition and Excise Station, Pathikonda as you were found to be absconded. Then you voluntarily surrendered in Pathikonda Court on 02-08-2001 and you were pleased on bail on 03-08-2001 by theCourt. Then the Prohibition and Excise Inspector, Pathikonda send the samples through Court to the C.E.Kurnool, who after analysis report in C.E.No.441 of 2001, dated 17-07-2001 opined that the sample is diluted Arrack unfit for human consumption. After completing the investigation, charge sheet was filed in the Court of the Judicial First Class Magistrate, Pathikonda. Thus, you acted in a manner prejudicial to the maintenance of public order and tranquility and causing wide spread danger to the public safety and health.*

*3. Cr.No.71/2002-03, dated 26-07-2002.*

*On 26-07-2002 at 12.00 noon during the raids conducted by 1) Sri K.Jagannatha Rao, Assistant S.I. of Police 2) Sri B.Ranganna, PC-1659 along with mediators 1) Sri B.Ramaiah, 2) Sri K.Amaresa on Gonegondla to Kodumur road near Gajuladinne village bus stage, you were found in possession of 80 Karnataka Arrack Sachets. The Assistant S.I. of Police Gonegondla P.S. drawn samples seized property and arrested the accused under the cover of panchanama and the same was transferred to Prohibition and Excise Inspector, Pathikonda on point of jurisdiction. The same was registered as Cr.No.71/2002-03 U/s.7(A) of A.P.Prohibition Act and you were sent to remand on 27-07-2002 while you were released on bail on 31-07-2002. Then the samples were sent to Chemical Examiner, Kurnool through*

*Court, who after analysis in his report C.E.No.486/2002, dated 20-08-2002 opined that 'the sample is diluted arrack unfit for human consumption'. After completing the investigation charge sheet was filed in the Court of Judicial First Class Magistrate, Pathikonda and the C.C. number to be assigned. Thus you acted in a manner prejudicial to the maintenance of public order and tranquility and causing wide spread danger to the public safety and health.*

*4. Cr.No.169/2003-04, dated 03-01-2004.*

*On 03-01-2004 at about 5.00 p.m. on the information received by 1) Sri T.Sreedhar, S.I. of Police, Gonegondla, 2) Sri B.Ranganna PC-1659 and 3) Sri C.Gopal PC-2293 along with mediators 1) Sri A.Gopal, 2) Sri A.Amaresa conducted raids in the outskirts of H.Kairawadi village in the dry land of Boya Tapala Ranganna and found while carrying a white super bag containing 300 Karnataka Arrack Sachets and after that found another 3 super bags containing 850 Karnataka Arrack Sachets, hidden in hay-stacks, samples were drawn property was seized and you were arrested under the cover of a panchanama. The same was registered as Cr.No.3 of 2004 under Section 8(b) of A.P.Prohibition Act and A.P.Excise Act in Goneogondal Police Station. You were remanded on 04-01-2004 and enlarged on bail on 07-01-2004. Then case was transferred to Prohibition and Excise Inspector, Pathikonda and the same was re-registered as Cr.No.169/2003-04 under Section 7(A) read with 8(e) of A.P.Prohibition Act. Then the samples were sent to Chemical Examiner, Kurnool though Court, who after analysis in his report No.C.E.No.242/2004, dated 29-05-2004 opined that 'the sample is diluted arrack unfit for human consumption'. After completing the investigation charge sheet was filed in the Court of Judicial First Class Magistrate, Pathikonda and the C.C. number to be assigned. Thus you acted in a manner prejudicial to the maintenance of public order and tranquility and causing wide spread danger to the public safety and health.*

*5. Cr.No.97/2004-05, dated 09-07-2004*

*On 09-07-2004 at about 11.00 a.m. while conducting route watch after receiving credible information at Kurvapalli village bus stop in the jurisdiction of Alur Prohibition and Excise Station in the presence of 1) Sri B.Ramadas, P&ESI, 2) Sri P.V.Subbaraju, P&EHC, 3) Sri Y.Sreenivasulu, P&EC, 4) Sri B.Sreenivasulu, P&EC, 5) Sri D.Ch.Allaswamy, PC and 6) Sri Munirangadu, PC along with mediators 1) Sri Erranna, S/o.Honnurappa, R/o.Kurvapalli village, 2) Sri Obulesu, S/o.Mukkenna, R/o.Kurvapalli village found one Tempo Tax bearing No.AP 21 V 5529 containing 10,800 Karnataka Arrack Sachets kept in 36 bags, while one P.Venkateswara Reddy was arrested and you and four others escaped from the scene, samples were drawn property was seized under the cover of a panchanama. The same was registered as Cr.No.97/2004-05 under Section 7(A) read with 8(e) of A.P.Prohibition Act in Prohibition & Excise Station, Alur. Then the samples were sent to Chemical Engineer, Kurnool though Court, who after analysis in his report No.C.E.No.358/2004, dated 13-08-2004 opined that 'the sample is diluted arrack unfit for human consumption'. After completing the investigation, charge sheet will be filed in the court of Judicial First Class Magistrate, Alur. You yourself voluntarily surrendered in Court and released on condition bail to attend Alur Prohibition and Excise Station regularly. Thus you acted in a manner*

*prejudicial to the maintenance of public order and tranquility and causing wide spread danger to the public safety and health.*

*That you are illegally found in possession, transport and sale of Karnataka Arrack Sachets in Puttapasam village and surrounding areas and taking advantage of ban on arrack in A.P. for monetary gains, thereby causing grave and wide spread danger to public health, safety and acted in a manner prejudicial to maintenance of public order and tranquility. It is evident that as many as (5) cases booked against you by Prohibition and Excise Officers and as well as Police Officers, you have been found repeatedly committing the same type of offences knowing fully well that illicit possession, transport and sale of Karnataka Arrack Sachets and punishable under Prohibition and Excise Laws. It is established that you and your son have committed, and abetted the same type of offences. Moreover the expert in his analysis made crystal clear that the Karnataka Arrack Sachets seized from you and your son have been found to be "Diluted Arrack, unfit for human consumption".*

*Further the Hon'ble Special Judicial First Class Magistrate (P&E) Kurnool in C.C.No.1053 of 99 vide Cr.No.26/98-99 convicted you for six months imprisonment and fine of Rs.5,000/- on 18-08-2004. But utilizing the provisions of law you were acquitted in higher Court. Thus you have taken the shield of law and repeatedly committing the offences of possession, sale and transport and you have not stopped committing the same type of offences. On careful consideration of material placed before me, it is therefore established that cases booked against you under Prohibition and Excise Laws have failed to curb the illegal sale for your monetary gain, which are found to be dangerous to public health and also prejudicial to the maintenance of Public Order. You are therefore a "Boot Legger" within the definition of Sec.2(b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act 1986 (1 of 1986).*

5. The order of detention has been challenged on twin grounds:-

> **Firstly**, the incidents 1 to 3 are stale in nature and **secondly**, the F.S.L. reports do not indicate of the arrack seized from the possession of the detenu is injurious to health.

6. The first respondent has filed his counter affidavit resisting the writ petition and supporting the order of detention.

7. The learned Senior Counsel Mr.C.Padmanabha Reddy appearing for the petitioner contends that the detaining authority has no material to come to a

conclusion that the Karnataka arrack sachets allegedly seized from the possession of the detenu are injurious to health and, therefore, the conclusion drawn by the detaining authority the acts of detenu amounts to prejudicial to the maintenance of public order and tranquility, and wide spread danger to the public safety and health, is not based on any material, in which case, the detention order is liable to be set aside. He also contends that the incidents 1 to 3 are stale in nature and, therefore, the detention order suffers from serious infirmity, since the same is based on the said stale incidents. In support of his submission, he placed reliance in ***S.JAYAMMA*** v ***COLLECTOR AND DISTRICT MAGISTRATE, CUDDAPAH: M.PREMA BAI*** v ***THE COMMISSIONER OF POLICE, HYDERABAD***; ***E.NOOKARATNAM*** v ***THE COLLECTOR AND DISTRICT MAGISTRATE, NELLORE*** and ***N.RAMI REDDY*** v ***GOVERNMENT OF ANDHRA PRADESH***.

8. The learned Special Government Pleader, representing the Advocate General, on behalf of the respondents submits that the earlier three incidents have been taken into account to show the propensity of the detenu and therefore the detention order does not suffer from any staleness. His further submission is that the Public Analyst Report speaks of the presence of fusel oil and therefore, the detaining authority is justified in drawing an inference that the arrack seized from the possession of the detenu is injurious to health.

9. The question that falls for consideration is whether the diluted arrack unfit for human consumption can be categorized as injurious to health?

10. The F.S.L. reports have been placed on record. It is clear from the F.S.L. report that the samples of arrack seized from the possession of detenu are subjected to tests. The tests indicate as follows:-

1. Test for Alcohol :- Positive.

2. Test for Fusel Oil :- within the limits.

3. Test for Acidity :- Neutral to PH.

In some of the samples, the fusel oil is found to be positive.

11. One aspect is very clear that the reports do not speak of the samples is being injurious to health. In such a situation, whether the arrack seized from the possession of the detenu can be categorized as injurious to health? This question is squarely covered by the decision of a Division Bench of this Court i n ***BOYA CHINNA SUBBARAYUDU*** v ***THE COLLECTOR AND DISTRICT MAGISTRATE, KURNOOL,*** wherein it is, held that:-

> *"It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P.Excise Act, the rules and the notifications and the orders made under the Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause 'grave or widespread danger to life or public health' he can be detained. If a bootlegger sells illicitly distilled arrack which contains harmful substance, certainly he can be detained on the ground that this activities constitute grave danger to life or public health.*
>
> *The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."*
>
> *On the facts of that case, the Division Bench observed and held as follows:*
>
> *"From a reading of the relevant paragraphs of the Excise Manual it is clear that the presence of fusel oil in liquor by itself is not injurious to health. Only when fusel oil is separated from the liquor and consumed in large quantities either by human beings or animals, it will prove injurious. What is the permissible level of the fusel oil is not mentioned in the Excise Manual, nor do we get it from the report of the Chemical Examiner. Unless it is stated in the report of the Chemical Examiner that the seized liquor from the premises of the petitioner contained fusel oil in impermissible limits so as to cause grave or widespread danger to life or public health the detaining authority will not be justified in ordering the detention on the ground that the detenu is acting in a manner prejudicial to the maintenance of public order.*
>
> *xxxx xxxx xxxx*

*Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution is violated.*"

12. The above decision has also been followed by another Division Bench of our High Court in ***SMT.E.NOOKARATNAM's*** case (3 supra).

13. The detaining authority has drawn an inference that the arrack seized from the possession of the detenu is injurious to health and public safety. There is no material on record to draw such an inference by the detaining authority and, therefore, the detention order suffers from serious infirmity and the same is liable to be set aside.

14. With regard to staleness, a Full Bench of this Court, in ***S.JAYAMMA's*** case (1 supra), held as follows :-

*"The issue required to be adjudicated is whether the reference in the detention orders regarding the past conduct of the detenu for the purpose of arriving the propensity of criminal acts of the detenu would vitiate the detention order. The judgments are clear on this aspect, which are referred to above. The relevancy and proximity of time are sine qua non for successfully sustaining the order of detention. No hard and fast rule can be fixed and each case has to be decided on its own merits. The Supreme Court considered gap of sixteen months between the offending acts and the detention order and set aside the order of detention holding that the order of detention was based on stale incidents. Therefore, the proximity in time should provide a rational nexus between the incident relied on and the satisfaction arrived at. While there is no prohibition to consider the past events, at the same time, there should be continuous link of events coupled with proximity of time. Under these circumstances only the order of detention would be immune from attack. Accordingly, we answer the reference as follows:*

*While there is no specific bar for the detaining authority to refer to the past events, but at the same time such events should have a close and continuous link and proximity so as to provide a rational nexus between the incident relied on and the satisfaction arrived at."*

15. In this case, the detaining authority relied on five incidents to pass the

impugned order. The first two incidents relate to the year 2001 and the third incident relates to the year 2002, whereas the fourth and fifth incidents relate to the year 2004. It can be definitely said without any controversy that one and two incidents are stale in nature since they occurred three and half years prior to the date of the detaining Order. On this ground also, the detention order is liable to be set aside.

16. In the result, the Writ Petition is allowed and the order of detention passed by the first respondent-The Collector and District Magistrate, Kurnool, in Rc.No.C1/M/876/2004 dated 20-08-2004 is hereby set aside, and the detenu viz., Boya Thapala Ranganna @ Boya Pedda Ranganna, son of Karrenna, is directed to be set at liberty forthwith, if he is not otherwise required in any other crime.

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**G.BIKSHAPATHY, J**

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**B.SESHASAYANA REDDY, J**

Date : 07-10-2004

prv

To

1 The Collector and District Magistrate, Kurnool.

2 Govt., of A.P., rep. by its Chief Secretary,
General Administration (Law and Order-II)

Department, Secretariat buildings, Hyderabad.

3 The Superintendent, Central Prison, Charlapally,

Ranga Reddy District.

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